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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

**IN RE GOOGLE PLAY STORE
ANTITRUST LITIGATION**

THIS DOCUMENT RELATES TO:

Epic Games Inc. v. Google LLC et al., Case
No. 3:20-cv-05671-JD

Case No. 3:21-md-02981-JD

**GOOGLE'S EMERGENCY
ADMINISTRATIVE MOTION FOR
IMMEDIATE PARTIAL
ADMINISTRATIVE STAY OF
PERMANENT INJUNCTION;
EXPEDITED BRIEFING ON ITS
MOTION FOR PARTIAL STAY
PENDING APPEAL; AND TO FILE AN
OVERLENGTH MOTION FOR PARTIAL
STAY PENDING APPEAL**

Judge: Hon. James Donato

GOOGLE'S EMERGENCY ADMINISTRATIVE MOTION FOR IMMEDIATE PARTIAL ADMINISTRATIVE
STAY OF PERMANENT INJUNCTION; EXPEDITED BRIEFING ON ITS MOTION FOR PARTIAL STAY
PENDING APPEAL; AND TO FILE AN OVERLENGTH MOTION FOR PARTIAL STAY PENDING APPEAL

Case Nos. 3:21-md-02981-JD, 3:20-cv-05671-JD

On October 7, 2024, this Court issued a permanent injunction with a number of provisions that have an effective date of November 1, 2024 (Dkt. 1017¹). Concurrently with this emergency administrative motion, Defendants Google LLC, *et al.*, are filing with this Court a motion for a partial stay of the permanent injunction pending appeal to the Ninth Circuit. Given the shortness of time between issuance of the injunction and the effective date for many of the provisions—just 25 days—Google respectfully requests certain administrative relief so that this Court and, if necessary, the Ninth Circuit, may consider and resolve Google’s motion for a partial stay of the permanent injunction pending appeal prior to any provision taking effect. A hearing is unnecessary on this request for administrative relief given the Court’s familiarity with the issues presented by the injunction and their impact on Google.

Specifically, pursuant to Local Rules 6-3 and 7-11, Google requests:

(1) an immediate administrative stay of all the provisions of this Court’s October 7, 2024 permanent injunction (Dkt. 1017) except ¶ 8² until 30 days after this Court rules on Google’s motion for a stay of the injunction pending appeal, which is being filed contemporaneously with this motion. Granting a partial administrative stay of this limited duration will ensure that the parties can brief, and this Court and the Ninth Circuit can consider, Google’s request for a partial stay of the injunction pending appeal. It will also ensure Google can develop the new policies and guidelines and make the platform changes that are necessary to come into compliance.

Google respectfully requests that the Court rule on this requested relief for an immediate partial administrative stay of the November 1 effectiveness date by no later than noon, Pacific time, on Wednesday, October 16, 2024. Given the time exigencies imposed by the November 1 effective date, if the Court has not granted Google’s requested administrative stay

¹ All references to the docket refer to docket entries in Case Number 3:21-md-02981-JD, unless otherwise noted.

² Google agreed to the relief set out in ¶ 8 when it agreed to the State Settlement. Dkt. 522-2, Case No. 3:21-cv-05227-JD, at 21-22, 27-28.

1 by noon on October 16, Google will treat the lack of a ruling as an effective denial of the request
2 and seek immediate relief in the Ninth Circuit.

3 As the Court is aware, the November 1 deadline requires that Google come into
4 compliance with large swaths of the Court’s injunction within three weeks. At the closing
5 arguments, however, Google repeatedly indicated that at least 90 days would be necessary to
6 comply with the proposed injunction given the technical and contractual scope of the possible
7 remedies. August 14, 2024 Hr’g Tr., at 150:1-8. Notably, Epic did not object to that timeline. *Id.*
8 In fact, its original proposed injunction contemplated at least a 90-day delay in the effective date
9 to allow for compliance officers to simply notify Google executives of the order, let alone come
10 into compliance more generally with its mandates. Dkt. 952, at 12:24-27.

11 Google notes, for reference, that Apple received 90 days from entry of the permanent
12 injunction to comply with its limited mandates or seek a stay. *Epic Games, Inc. v. Apple, Inc.*, No.
13 4:20-cv-05640-YGR, Dkt. 813, at 1. The scope of the injunction in that case was a small fraction
14 of the scope of the injunction this Court has imposed on Google; the entire *Apple* injunction
15 roughly equates to just ¶ 9 of this Court’s injunction. As Google’s contemporaneously filed stay
16 motion and the accompanying declarations explain, Google is required to do far more under this
17 court’s injunction (¶¶ 4-10) in about a quarter of the time period, even excluding the work that
18 must begin immediately to implement the catalog access and third-party app store distribution
19 provisions that have a later effectiveness date. The requested administrative stay will permit this
20 Court and the Ninth Circuit adequate time to rule on the stay motion and also give Google time to
21 come into compliance with the injunction’s requirements should a stay be denied.

22 Google seeks this administrative stay in an effort to comply with Fed. R. App. P. 8(a),
23 which requires a party to seek a stay pending appeal in the district court before filing a stay motion
24 in the court of appeals except where “moving first in the district court would be impracticable.”
25 The November 1 compliance deadline makes it impossible to fully brief a stay motion in this
26 Court and the Ninth Circuit before the injunction is scheduled to take effect. In the *Apple*
27 litigation, for comparison, it took 30 days to get from the district court’s order denying a stay to

1 the Ninth Circuit's order resolving (and granting) Apple's stay motion. As of today, the
2 injunction's first compliance deadline is just 21 days away, and briefing has just begun in this
3 Court. There is no practical way to fully brief a stay motion in such a complex case in both this
4 Court and the Ninth Circuit within that window. Thus, if the Court has not granted Google's
5 request for an immediate administrative stay by **Wednesday, October 16, at noon Pacific time**,
6 Google will treat the Court's inaction as equivalent to an order denying its motion for a stay
7 pending appeal and will proceed to seek relief from the Ninth Circuit.

8 (2) To the extent the Court grants the administrative stay requested in (1) and would like
9 to receive a response and reply to Google's contemporaneously-filed motion for a stay of the
10 injunction pending appeal, Google respectfully requests an expedited schedule for the motion to
11 stay pending appeal. Google requests that the court set October 18, 2024, as the deadline for
12 Epic's response and October 23, 2024, as the deadline for Google's reply. This schedule will
13 ensure that no parties are unduly prejudiced by the time required to brief the stay motion. Google
14 requests a ruling based on the written briefing, unless the Court prefers to hold a hearing.

15 (3) Due to the scope of the Court's injunction and the extensive history of this complex
16 case, Google respectfully requests permission to file an overlength motion for a partial stay that
17 exceeds the limit for non-dispositive motions set by this Court's standing order in civil cases by 8
18 pages, to 23 pages total. This page extension ensures that Google can explain the irreparable harm
19 it faces, as well as address its likelihood of success on appeal, the balance of the equities, and the
20 public interest.

21 The parties tried to reach a stipulation but were only partially able to do so. Epic (a)
22 objects to Google's request to stay the effectiveness date of the injunction, (b) agrees with
23 Google's proposed briefing schedule, (c) takes no position on Google's request for additional
24 pages (with the understanding that Epic will receive parity on the page limits for its opposition
25 should the Court call for one), and (d) takes no position on Google's request that the Court rule on
26 the administrative motion by October 16 at 12pm Pacific. *See* Declaration of Jonathan Kravis,
27 attached hereto.

DATED: October 11, 2024

Respectfully submitted,

By: /s/ Neal Kumar Katyal

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Counsel for Defendants

DECLARATION OF JONATHAN KRAVIS

1
2 1. The facts and opinions are within my personal knowledge and if called as a
3 witness, I could and would competently testify to them.

4 2. I, along with Brian Rocca and Jessica Ellsworth, participated in a meet and confer
5 related to the requested relief with Epic's counsel Yonatan Even on Thursday morning, October
6 10, 2024.

7 3. Google explained that it is requesting an administrative stay of the November 1
8 effectiveness date in order to have time to brief its motion for a stay of the injunction pending
9 appeal in this Court and, if necessary, in the Ninth Circuit. Google proposed an expedited
10 timeline for briefing its motion for a stay of the permanent injunction pending appeal and
11 agreed to have the motion ruled on without argument in order to further expedite this Court's
12 consideration. Google also explained that it was seeking to stay the effectiveness date for 30
13 days beyond this Court's ruling in order to seek relief if necessary in the Ninth Circuit.

14 4. Epic's counsel responded at the end of the day, advising that Epic (a) objects to
15 Google's request to stay the effectiveness date of the injunction, (b) agrees with Google's
16 proposed briefing schedule, (c) takes no position on Google's request for additional pages (with
17 the understanding that Epic will receive parity on the page limits for its opposition should the
18 Court call for one), and (d) takes no position on Google's request that the Court rule on the
19 administrative motion by October 16 at 12pm Pacific.

20 5. Google would face substantial harm if the Court does not change the timeline.
21 The injunction requires most changes to be in effect three weeks from today, risking potentially
22 widespread product glitches and providing next to no time to analyze what the injunction
23 permits and does not permit—much less educate Google personnel, developers, and users on the
24 upcoming changes.
25


Jonathan Kravis